



Fairfax County
Department of
Telecommunications
and Consumer Services

TENANT
LANDLORD
ARBITRATION

GENERAL INFORMATION

Under Virginia law, parties to a dispute may agree to submit their differences to arbitration. Arbitration provides a fair, effective and expeditious complaint settlement procedure. It is a system of redress which provides an independent mechanism to resolve tenant-landlord disputes when other means fail. Specific statutory language makes these agreements enforceable in any court of the Commonwealth having jurisdiction over the subject of the dispute. Arbitration agreements can be as binding as any other contract. The Consumer Services Division (CSD) of the Fairfax County Department of Telecommunications and Consumer Services (DTCS) conducts its arbitration program in keeping with this law.

Either party to a dispute may initiate arbitration provided that mediation efforts by the CSD have been exhausted. Both parties must agree to the proceeding before it can begin, and the proceeding is limited to the subject of the previously unsuccessful mediation.

The arbitration procedure calls for a panel of three arbitrators appointed from the Fairfax County Tenant-Landlord Commission (TLC) by its chairperson. Because CSD underwrites all ordinary administrative expenses and schedules the proceedings at convenient hours, arbitration is an inexpensive alternative to the court for settling tenant-landlord disputes. Arbitration offers the following advantages to the parties:

- It is easily accessible to tenants and landlords.
- Arbitrators are drawn from among the tenant, landlord, and public members of the TLC to form a balanced panel, and their impartiality is assured before their appointment to hear and decide any given case.
- The procedures of an arbitration panel are simple, informal, and involve little or no cost to the participants.
- An arbitration decision is applicable to a range of tenant-landlord transactions; it can be legally binding on both parties and enforced by the courts.

Additional information about tenant-landlord arbitration and forms for submitting disputes to arbitration may be obtained from the Fairfax County Department of Telecommunications and Consumer Services, Consumer Services Division, 12000 Government Center Parkway, Suite 433, Fairfax, Virginia 22035; telephone (703) 222-8435.

RULES OF PROCEDURE

SECTION 1.
AGREEMENT OF THE PARTIES

These rules shall apply to tenant-landlord disputes filed with the Fairfax County Department of Telecommunications and Consumer Services, Consumer Services Division pursuant to a written agreement to arbitrate. However, no disputes shall be submitted to arbitration prior to exhaustion of mediation by the CSD.

SECTION 2.
DEFINITIONS

(a) **Tenant-Landlord disputes** are any disagreements between two parties, one of whom has filed a complaint with the CSD, regarding the rental of dwelling units and the obligations and provision of services relative to the rental of such property. These disputes do not include demands for damages from personal injury. If, during the course of any proceeding conducted pursuant to these rules, it appears to the arbitrators that the issues before them do not coincide with this definition, they must dismiss the hearing or narrow the issues to those that fall within this definition.

(b) **Administrator** refers to the Director of the Department of Telecommunications and Consumer Services or his/her designee.

(c) **Arbitrators** refers to the panel selected in accordance with Section 4 of these rules which hears specific disputes and makes a final decision or award.

SECTION 3.
PROCEDURES FOR INITIATING ARBITRATION

If mediation has failed to resolve a dispute, the CSD staff may suggest, or either party may request, that the dispute be arbitrated. Arbitration may be commenced under these rules by either party filing a signed Submission to Arbitration Agreement with the CSD. The Agreement shall contain: the names and addresses of both parties; a statement

of the nature of the claim; the remedy or adjustment sought including a specific dollar amount or specific services the requesting party is seeking; the names of any persons who shall be present at the hearing to accompany and/or assist the tenant or landlord; and the names of any attorneys who will be representing the tenant or landlord. The Agreement shall bind the parties (1) to arbitrate in good faith pursuant to these rules, (2) to permit inspections or visitations by the panel, and (3) to submit materials involved in a dispute to technically competent persons for examination as deemed advisable and selected by the panel.

The Administrator shall forward the Agreement to the other party involved within five (5) days from the date of receipt. The non-initiating party shall sign the Agreement and return it to the Administrator within ten (10) days. Failure to return the signed Agreement by the non-initiating party to the Administrator within ten (10) days from the date of mailing or personal service will be considered as a rejection of arbitration. Notice of the acceptance or rejection of arbitration shall be promptly given to the initiating party by the Administrator. If the non-initiating party has accepted arbitration, the Administrator shall send a copy of the completed Agreement to the initiating party.

SECTION 4.
APPOINTMENT OF ARBITRATORS

The Administrator shall contact the Chairperson of the Tenant-Landlord Commission, who shall appoint three Commission members to the arbitration panel. The Chairperson shall notify the Administrator of the panel members appointed. The tenant, landlord, and public sector shall each have one representative on the panel with the public member acting as Chairperson of the panel.

SECTION 5.
QUALIFICATIONS OF ARBITRATORS, and
DISCLOSURES

No person shall serve as an arbitrator in any dispute in which he or she has a financial or personal interest. Prior to accepting an appointment, a prospective arbitrator shall disclose any circumstances which he or she believes might disqualify him or her as impartial or might create an appearance of bias. All doubts shall be resolved in favor of disclosure. The Administrator shall transmit information relative to such disclosures to the parties and afford them the opportunity to indicate the unacceptability of any arbitrator appointed. Unacceptable or disqualified arbitrators shall be replaced in accordance with the procedures specified in Section 4 of these rules.

SECTION 6.
ARBITRATORS' OATH AND NOTICE OF
APPOINTMENT

The arbitrators must sign an oath to faithfully and fairly hear and examine the matters in controversy. Notices of Appointment and the Arbitrators Oath shall be mailed to the arbitrators by the Administrator along with a copy of these rules. The signed and dated Arbitrators Oath and Notice of Appointment shall be returned to the Administrator within five (5) days of receipt.

SECTION 7.
VACANCIES

The Administrator shall act to fill any vacancy created if an arbitrator is unwilling or unable to serve for any reason. The selection process will be as outlined in Section 4.

SECTION 8.
COMMUNICATION AND SERVING OF NOTICES

There shall be no direct communication between the parties and the panel regarding the dispute other than at oral hearings, and the occurrence of any such communication can be considered cause to void an award. Any other communication from the parties to the panel and vice versa shall be transmitted to the recipient through the Administrator. Any party agreeing to arbitration pursuant to these rules shall be deemed to have consented that any notices or other communication relevant to the arbitration proceeding may be mailed to the party at his or her last known address, unless otherwise specified in these rules.

SECTION 9.
NOTICE OF HEARING

Upon appointment of the panel, the Administrator shall promptly establish a date, time, and place for oral hearings with due regard for the convenience of the participants. Once determined, notice of the hearing shall be sent to the parties and members of the panel at least five (5) days in advance of the date set for the hearing. The Administrator shall attempt to obtain full agreement or compliance as to the time and place of the hearing prior to issuing notice of the scheduling. Objections or inability to comply with the announced scheduling shall be submitted to the Administrator in writing not later than three (3) days after receipt of the notice. The Administrator shall again endeavor to determine a mutually satisfactory time and place for the

hearing. In each such instance, the Administrator will have the final decision in evaluating the need for rescheduling. Objections to an announced hearing date or place shall not act to unduly delay or frustrate the arbitration procedure. The Administrator shall have the option of authorizing a hearing to take place in the absence of one of the parties to the dispute in accordance with the procedures specified in Section 13 of these rules.

SECTION 10.
ARBITRATION PANEL - METHOD OF DECISION

All controversies submitted to an arbitration panel shall be settled by a majority vote, including procedural questions and issues relating to the award.

SECTION 11.
OATHS ADMINISTERED AT HEARING

At the oral hearing, the parties and any witnesses shall be placed under the following oath by the Chairperson of the panel:

"Do you solemnly swear or affirm that all the testimony you give in this case will be the truth, the whole truth, and nothing but the truth?"

SECTION 12.
ORDER OF PROCEEDINGS AT A HEARING

(a) The Chairperson of the panel shall read aloud the "nature of the claim" and the "remedy or adjustment sought" sections of the Submission to Arbitration Agreement to verify that both parties have in fact agreed to arbitrate the particular dispute.

(b) The Chairperson of the panel shall administer the oath to all testifying persons.

(c) The initiating party shall then present his or her claims, evidence material to the controversy, and witnesses, if any, and shall, with such witnesses, submit to questions from the panel and respondent.

(d) The responding party shall then present his or her claims, evidence material to the controversy, and witnesses, if any, and shall, with such witnesses, submit to questions from the panel and the initiating party.

(e) The order of the proceedings may vary at the discretion of the panel provided that full opportunity is given each party to present all evidence necessary for a decision.

(f) The panel shall declare the hearing closed if no party has further evidence to offer or witnesses to present. At the discretion of the panel a hearing may be continued at a later date which is mutually agreed to by the parties.

SECTION 13.
ABSENCE OF A PARTY

Arbitration hearings may proceed in the absence of any party who, after due notice of the hearing, fails to appear, but such absence shall not be the basis for a default judgment. Rather, the attending party shall submit evidence and the panel may render an award based thereon.

SECTION 14.
ATTENDANCE AT PROCEEDINGS

Parties to the dispute shall have the right to bring any witnesses having knowledge of any of the matters under dispute. The Administrator may permit persons not having a direct interest in the dispute to attend hearings by obtaining the consent of the parties. The foregoing shall not preclude attendance at the proceedings of an interpreter to assist any party who would otherwise experience a language or communication problem. The panel may permit a deposition to be taken of a witness who is unable to attend the hearing. The panel shall have the discretion to require any person to temporarily leave the hearing room when the panel deems his or her presence to be unnecessary or undesirable.

SECTION 15.
REPRESENTATION BY COUNSEL

Either party has the right to be represented by an attorney at any proceeding or hearing. Waiver of this right prior to the proceeding or hearing is ineffective.

SECTION 16.
EVIDENCE

The parties may offer evidence material to the controversy and shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall judge the relevance or propriety of the evidence offered. Evidence not authorized by law shall not be admitted; however, the panel is within its authority to consider hearsay evidence.

Evidence shall be taken in the presence of the panel and all the parties, except where a party has in any

manner waived the right to be present, or where additional evidence requested by the panel is to be submitted after the hearing. All documents not filed but arranged for at the hearing shall be submitted to the Administrator for transmittal to the panel. Each party shall be afforded an opportunity to examine and challenge these documents under conditions specified by the panel so as to provide for both equity and expedience in making an award.

SECTION 17.
HEARING RECORD

The Administrator shall see that a complete record of the proceedings is made by tape recording, stenographic transcript, or other appropriate means and maintained for use by the panel, the Administrator, the parties and the court. This record shall be maintained by the Administrator for the period of one (1) year or such longer time as may be required if ordered by a court of competent jurisdiction. This record shall be made available to any party to the dispute upon request, provided that the cost of duplicating the record shall be borne by the requesting party and that all parties have access to such record. No party shall be prevented from recording the proceedings by any of the means specified for his or her personal use. Public disclosure and distribution of the record shall not be made unless the mutual consent of the parties is obtained in writing, or pursuant to a proper Freedom of Information Act (FOIA) request.

SECTION 18.
INSPECTION OR INVESTIGATION

Whenever the panel deems it necessary to make an inspection or investigation in connection with the arbitration, it shall advise the parties of its intention. Any party who so desires may be present at such inspection or investigation, and may comment on the inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the panel shall allow them the opportunity to comment. If at all possible, inspections should be arranged prior to a hearing.

SECTION 19.
ADJOURNING, POSTPONING, REOPENING A HEARING

At the discretion of the panel, a hearing may be adjourned from time to time as necessary. Upon request of a party for good cause, or upon its own motion, the panel may postpone the hearing. No hearing shall be reopened after an award has been made.

SECTION 20.
WAIVER OF RULES

Any party who proceeds after actual knowledge that a provision of these rules has not been complied with and who fails to object thereto in writing prior to the time within which the award is to be made shall be deemed to have waived the right to object.

SECTION 21.
ADMINISTRATIVE COSTS, EXPENSES

Facilities for holding the hearings, maintenance of records, and the attendance of interpreters shall be provided for by the Administrator. All normal administrative costs are to be borne by the Administrator, with extraordinary costs, as determined by the Administrator, assessed equitably between the parties. Every effort shall be made to keep extraordinary costs to a minimum by scheduling hearings and inspections during convenient hours, underwriting the expense, where possible, of any evidentiary materials requested by the panel, etc. Costs for recording the proceedings for personal use and witnesses for either side shall be the responsibility of the requesting party.

SECTION 22.
THE AWARD

(a) Time of the Award

The award shall be made promptly by the panel and no later than ten (10) days from the closing of the hearing. If a hearing has been adjourned or postponed, an award shall be made no later than ten (10) days from the closing of the last hearing.

(b) Form of the Award

The award shall be in writing and signed by the arbitrators joining in the award.

(c) Scope of the Award

The panel may grant any relief or remedy within the scope of the arbitration agreement deemed just and equitable and allowable under Virginia law. The remedy or relief shall be applicable only to the parties themselves.

(d) Delivery of the Award

The award shall be recorded on an Award Form and transmitted to the Administrator. The Administrator shall deliver a copy of the award to each party personally or by registered mail.

(e) Settlement Prior to the Award

If the parties settle their dispute during the course of a proceeding, and prior to rendering of an award, the panel upon the parties' written request may set forth the terms of the agreed settlement in an award.

(f) Change of Award by Panel

If there is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award, or if the award is imperfect in a matter of form, not affecting the merits of the controversy, a party may make an application for modification by bringing this matter to the attention of the Administrator. Application for modification must be made within twenty (20) days after delivery of the award. Written notice of the application for modification shall be given to the opposing party by the Administrator, stating that he or she must serve his or her objections to the modification, if any, within ten (10) days from his or her receipt of the notice. The Administrator shall forward to the panel the application for modification and any objections. The panel may effect the appropriate modification. The Administrator shall immediately transmit any such modification to the parties. The corrected version of the award shall supersede and take precedence over any award which was in error and previously issued.

(g) Confirmation, Vacation, Modification or Correction of Award by Court

A party may apply to a Virginia Court having jurisdiction over the subject matter of the controversy for confirmation, vacation, modification or correction of an award as provided by law.

SECTION 23.
INTERPRETATION OF ARBITRATION RULES

The panel shall interpret and apply these rules insofar as they relate to the powers and duties of the panel. All other rules shall be interpreted and applied by the Administrator, who shall also decide questions of rule interpretation referred by the panel. In all cases, the rules shall be interpreted broadly and construed so as to facilitate the rendering of an impartial, just, and timely arbitration decision.

SECTION 24.
APPLICABLE LAW

Virginia Code, Sections 8.01-577 through 8.01-581.016 (1992, as amended) shall govern these rules and apply to all awards. Virginia law provides that parties to a controversy may agree to submit their differences to arbitration, and that the resulting award may be returned to and entered as a judgment of a court of the Commonwealth having jurisdiction over the subject matter of the controversy.

In essence, arbitration agreements may be as binding as any other agreement, and may be enforced through the courts. Specific statutes governing the validity of written arbitration agreements, enforcement of arbitration awards through the court, and the power of a court to vacate an arbitration award are contained in the Virginia Code sections cited above. These aspects of the arbitration process are beyond the authority of the CSD, and these rules. Questions arising in these areas should be referred to an attorney experienced in the law of arbitration.



FAIRFAX COUNTY

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